

AUG 09 2006

United States v. Mendoza-Prado
05-15975

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RYMER, Circuit Judge, concurring in part and dissenting in part.

Given that the testimony at most shows that counsel did not bring up the possibility of a superseding indictment at their *last* meeting, her experience, the hours she spent discussing the case with Mendoza-Prado, his own wish to go to trial and not to accept a five-year plea bargain, and testimony that Mendoza-Prado knew about the different minimum sentences and had been warned about the greater exposure of going to trial, I don't think counsel's performance was deficient. Nor does Mendoza-Prado indicate where he even said that he would have accepted the deal if he had known about the possibility of a superseding indictment – or explain how the district court, which did not find him credible at all, would have believed him had he said it. And he was actually subject to the same mandatory minimum sentence he would have been subject to had he taken it. I think the district court got it right across the board, and would, therefore, affirm.